

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1778

Introduced by Assembly Member Allen

February 18, 2014

An act to amend Section ~~241~~ 17941 of the Revenue and Taxation Code, relating to ~~taxation~~ *taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL’S DIGEST

AB 1778, as amended, Allen. ~~Property taxation: exempt property. Corporation taxes: minimum annual tax: limited liability company: exemption.~~

Existing law generally imposes an annual minimum franchise tax of \$800, except as provided, on every limited liability company doing business in this state or registered in this state, as specified. Existing law defines the term “limited liability company,” for purposes of the payment of the annual minimum franchise tax, to exclude a limited liability company that is exempt from the payment of the tax and certain fees under other existing law.

This bill would also exclude from that definition a limited liability company that is formed for the exclusive purpose of acquiring and holding title to intangible personal property constituting equity or debt interests, or both, in a single other corporation, limited liability company, or partnership, collecting income therefrom, and turning over the entire amount thereof, less expenses, to its members, thereby exempting such an entity from that minimum tax.

This bill would take effect immediately as a tax levy.

~~Existing law exempts from property taxation the first \$50,000 worth of hand tools that are owned and supplied by an employee as a condition of employment.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17941 of the Revenue and Taxation Code
2 is amended to read:

3 17941. (a) For each taxable year beginning on or after January
4 1, 1997, a limited liability company doing business in this state
5 ~~(as state, as defined in Section 23101)~~ 23101, shall pay annually
6 to this state a tax for the privilege of doing business in this state
7 in an amount equal to the applicable amount specified in
8 subdivision (d) of Section 23153 for the taxable year.

9 (b) (1) In addition to any limited liability company that is doing
10 business in this state and is therefore subject to the tax imposed
11 by subdivision (a), for each taxable year beginning on or after
12 January 1, 1997, a limited liability company shall pay annually
13 the tax prescribed in subdivision (a) if articles of organization have
14 been accepted, or a certificate of registration has been issued, by
15 the office of the Secretary of State. The tax shall be paid for each
16 taxable year, or part thereof, until a certificate of cancellation of
17 registration or of articles of organization is filed on behalf of the
18 limited liability company with the office of the Secretary of State.

19 (2) If a taxpayer files a return with the Franchise Tax Board that
20 is designated as its final return, the Franchise Tax Board shall
21 notify the taxpayer that the annual tax shall continue to be due
22 annually until a certificate of dissolution is filed with the Secretary
23 of State pursuant to Section 17707.08 of the Corporations Code
24 or a certificate of cancellation is filed with the Secretary of State
25 pursuant to Section 17708.06 of the Corporations Code.

26 (c) The tax assessed under this section shall be due and payable
27 on or before the 15th day of the fourth month of the taxable year.

28 (d) For purposes of this section, “limited liability company”
29 means an organization, other than ~~a~~ the following:

1 (1) A limited liability company that is exempt from the tax and
2 fees imposed under this chapter pursuant to Section 23701h or
3 Section 23701x, that is formed by one or more persons under the
4 law of this state, any other country, or any other state, as a “limited
5 liability company” and that is not taxable as a corporation for
6 California tax purposes.

7 (2) *A limited liability company that is formed for the exclusive*
8 *purpose of acquiring and holding title to intangible personal*
9 *property constituting equity or debt interests, or both, in a single*
10 *other corporation, limited liability company, or partnership,*
11 *collecting income therefrom, and turning over the entire amount*
12 *thereof, less expenses, to its members.*

13 (e) Notwithstanding anything in this section to the contrary, if
14 the office of the Secretary of State files a certificate of cancellation
15 pursuant to Section 17707.02 of the Corporations Code for any
16 limited liability company, then paragraph (1) of subdivision (f) of
17 Section 23153 shall apply to that limited liability company as if
18 the limited liability company were properly treated as a corporation
19 for that limited purpose only, and paragraph (2) of subdivision (f)
20 of Section 23153 shall not apply. Nothing in this subdivision
21 entitles a limited liability company to receive a reimbursement for
22 any annual taxes or fees already paid.

23 (f) (1) Notwithstanding any provision of this section to the
24 contrary, a limited liability company that is a small business solely
25 owned by a deployed member of the United States Armed Forces
26 shall not be subject to the tax imposed under this section for any
27 taxable year the owner is deployed and the limited liability
28 company operates at a loss or ceases operation.

29 (2) The Franchise Tax Board may promulgate regulations as
30 necessary or appropriate to carry out the purposes of this
31 subdivision, including a definition for “ceases operation.”

32 (3) For the purposes of this subdivision, all of the following
33 definitions apply:

34 (A) “Deployed” means being called to active duty or active
35 service during a period when a Presidential Executive order
36 specifies that the United States is engaged in combat or homeland
37 defense. “Deployed” does not include either of the following:

- 38 (i) Temporary duty for the sole purpose of training or processing.
39 (ii) A permanent change of station.

1 (B) “Operates at a loss” means a limited liability company’s
2 expenses exceed its receipts.

3 (C) “Small business” means a limited liability company with
4 total income from all sources derived from, or attributable, to the
5 state of two hundred fifty thousand dollars (\$250,000) or less.

6 (4) This subdivision shall become inoperative for taxable years
7 beginning on or after January 1, 2018.

8 *SEC. 2. This act provides for a tax levy within the meaning of*
9 *Article IV of the Constitution and shall go into immediate effect.*

10 ~~SECTION 1. Section 241 of the Revenue and Taxation Code~~
11 ~~is amended to read:~~

12 ~~241. (a) The first fifty thousand dollars (\$50,000) of personal~~
13 ~~property that consists of hand tools owned and supplied by an~~
14 ~~employee that are required as a condition of that employee’s~~
15 ~~employment are exempt from taxation.~~

16 ~~(b) For purposes of this section:~~

17 ~~(1) “Hand tools” means hand-held implements and equipment,~~
18 ~~including hand-held power tools, of which any one may be~~
19 ~~transported to and from the workplace and which are necessary~~
20 ~~for the ordinary and regular performance of the employee’s work,~~
21 ~~and also means the appropriate storage containers used to store~~
22 ~~those implements and that equipment.~~

23 ~~(2) “Hand tools owned and supplied by an employee” means~~
24 ~~only those hand tools that are either owned by the employee prior~~
25 ~~to the employment or are acquired and paid for by the employee~~
26 ~~during the employment, that the employee will continue to own~~
27 ~~after termination of the employment.~~

28 ~~(3) “Employee” means an individual who is employed by an~~
29 ~~employer that directly or indirectly supervises that person and~~
30 ~~exercises control over the wages and working conditions of~~
31 ~~individual workers. “Employee” does not include a self-employed~~
32 ~~individual or an independent contractor.~~